IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8719 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJNAGAR TEXTILE MILLS

Versus

KALIDAS MOTIBHAI

Appearance:

1. Special Civil Application No. 8719 of 2000

MR SHUKLA for NANAVATI & NANAVATI for Petitioner No. 1

MR VM DHOTRE for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 01/04/2004

ORAL JUDGEMENT

1. The petitioner - Rajnagar Textile Mills has

approached this Court to challenge the order passed below Recovery Application No. 2712 of 1996 by the learned Judge, Labour Court, Ahmedabad dated 27th April, 2000. By the said order the Labour Court has directed the petitioner to pay to the respondent a sum of Rs.1,53,147=38 ps. and it has also been directed to pay interest at the rate of 6% on the said amount from the date of respondent's retirement i.e. 31st December, 1992 till the payment. The Labour Court also directed the petitioner to pay Rs.500/= to the respondent towards cost of the litigation.

1.1. The respondent was working as Doffer since 1973 in the Spinning Department as permanent worker. According to him, on 2nd January, 1982 his service was terminated by oral order. He had, therefore, approached the Labour Court by filing "T" Application No. 710/1982, which was decided on 4th July, 1991, whereby the application was rejected. Against the same, he had preferred appeal before the Industrial Tribunal being Appeal (IC) No. 69 of 1991, which was allowed by the Tribunal. According to him, the Tribunal had directed the petitioner to pay to him the salary which was being paid to some of the workers named in the application by placing him above those workers and the petitioner was also directed to reimburse the financial loss that the respondent had suffered between the period 2nd January, 1982 and 11th February, 1986. According to the respondent, the Tribunal further directed that he should be paid the difference of salary of Sweeper and that of the Doffer from 11th February, 1986. Against the said judgment and order of the Tribunal the petitioner had approached this Court by filing Special Civil Application No. 5580 of 1992. In the said petition this Court directed the petitioner to pay back wages to the respondent between the period 2nd January, 1982 and 11th February, 1986. According to the respondent, the said direction was not carried out and hence he was required to file application under the provisions of the Contempt of Courts Act. It is his say that again in the year 1986 he was reinstated by the petitioner, but again relieved from the service with effect from 20th June, 1991. He, therefore, approached the Labour Court by filing Application No. 624 of 1991 for reinstatement on his original post. However, during the pendency of the said proceedings, on 31st December, 1992 he retired from the service. It is the say of the respondent that he was entitled to receive full salary for the period from 20th June, 1991 to 31st December, 1992. Since the same has not been paid to him, he was required to approach the Labour Court by filing the Recovery Application. The

respondent claimed Rs.1,83,847=38 ps. in the Recovery Application together with interest at the rate of 18%.

1.2. The said Recovery Application has been contested by the petitioner by filing written statement at Exh. 13 in which it has been averred that the contents of the application were not true. It was further averred that the claims regarding payment of gratuity and P.F. could not be entertained by the Labour Court and, therefore, the demand for the same deserved to be dismissed. It was further contended that since the petitioner was declared sick unit under the provisions of 'Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'the SICA') by the Board for Industrial and Financial Reconstruction (BIFR), no monetary claim could be decided in any proceedings. Both the parties produced necessary documents before the Labour Court. The respondent examined himself in support of his case, whereas the petitioner examined one Kalubhai Hasamji as its witness.

1.3. After considering the entire material placed before it, the Labour Court came to the conclusion that a sum of Rs.1,53,147=38 ps. was payable to the respondent by the petitioner and hence gave the aforesaid directions, which are now challenged before this Court.

2. Mr. Dipak Shukla, learned advocate for Nanavati and Nanavati for the petitioner has submitted that the calculations made by the respondent with regard to the amount payable to him under different heads is absolutely erroneous. He has further submitted that assuming that the entire claim of the petitioner was true, only Rs.67,825=40 ps. were payable to him which, by the order of this Court dated 9th August, 2000 had been deposited before this Court and the same has been withdrawn by the respondent. In view thereof, nothing more is required to be paid to him.

2.1. As against that, Mr. Dhotre has submitted that the Labour Court's judgment is just and proper. He has further submitted that the respondent was entitled to receive Rs.1,53,147=38 ps. as per the findings of the Labour Court and the said findings are based on the correct figures which have been submitted by the respondent. He has, therefore, prayed that the present petition be dismissed.

3. In view of the dispute with regard to the calculation of the outstanding amount under different heads, this Court had orally directed the petitioner to

put its own calculations on record which had been done by filing additional affidavit dated 31st August, 2001. In response to the further affidavit of the petitioner, the respondent has also filed affidavit alongwith his calculations dated 27th February, 2002. Thus, on record of this petition there are two sets of calculations, which are in dispute. It is not possible for this Court to go into the details of the calculations made by both the sides and produce on record of this petition. The best course is to remand the matter back to the Labour Court for permitting the parties to produce material to substantiate calculations that have been placed on record of this petition.

4. In view of the aforesaid, this petition is allowed to the extent that the finding of the Labour Court with regard to amount payable to the respondent is quashed and set aside. The Labour Court is directed to decide this issue in light of the material that may be placed by the parties before it afresh. It is made clear that whatever payment that has already been made to the respondent, respondent will not be required to return the same even if decision goes against the respondent.

4.1. It is also clarified that the petitioner has given up its contention with regard to the legality of proceedings in view of section 22(1) of the SICA. Now it will not be open for the petitioner to raise that contention before the Labour Court. The Labour Court is directed to complete the proceedings on or before 31st August, 2004.

With this direction, the petition is allowed to the aforesaid extent. Rule made absolute accordingly with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.